

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 96-388

March 10, 1998

NEW ENGLAND TELEPHONE AND  
TELEGRAPH COMPANY D/B/A NYNEX  
Proposed Joint Petition for  
Reorganization Intended to  
Effect the Merger with Bell  
Atlantic Corporation

SUPPLEMENTAL ORDER

---

WELCH, Chairman; NUGENT and HUNT, Commissioners

---

**I. SUMMARY**

In this Order, we determine that we will not open an investigation to consider whether to impose sanctions upon the New England Telephone Company d/b/a Bell Atlantic - Maine (Bell Atlantic or the Company) for failing to comply with the competitive checklist merger condition. We require that Bell Atlantic report to us on its activities in its competitive checklist proceeding in New York and provide us with at least 90-days notice of its intent to file a § 271 application with the Federal Communications Commission (FCC).

**II. BACKGROUND**

In the Commission's Order dated September 30, 1997 in Docket No. 96-388, the Commission suspended and modified its condition that Bell Atlantic meet the requirements of the competitive checklist contained in § 271(c)(2)(B) of the Telecommunications Act of 1996 in Maine by September 30, 1997. The Commission required that Bell Atlantic report to us by December 15, 1997 regarding its progress in meeting the competitive checklist in Maine.

On December 12, 1997, Bell Atlantic recommended that the Commission continue to monitor developments on checklist items by allowing the checklist proceeding in New York to run its course before beginning a proceeding in Maine.<sup>1</sup>

---

<sup>1</sup> In the New York proceeding, a procedural ruling (dated December 19, 1997) established that a stipulation on a baseline document was due on January 28, 1998. Parties were allowed a limited opportunity to file briefs on the baseline document on January 30, 1998.

On December 19, 1997, the Public Advocate filed its Request for Proceeding, which requests that the Commission open a proceeding to consider sanctions to be imposed upon Bell Atlantic for failing to comply with conditions in the merger order that it meet the checklist by September 30, 1997. The Public Advocate argues that Bell Atlantic's comments of December 12, 1997 demonstrate that it is now time to consider sanctions because the Company: (1) has made no effort to comply with the checklist in Maine; and (2) does not acknowledge its obligation to do anything, because of our merger condition, that it was not otherwise going to do anyway. The Public Advocate notes that while the Commission's Order of September 30, 1997, allowed a slippage in timing, nothing in that Order indicates that the Commission had reconsidered the bases for its merger condition or had withdrawn that condition. The Public Advocate requests that the Commission establish a new schedule requiring specific dates by which Bell Atlantic shall prove that its markets in Maine are fully open to competitors.

On January 2, 1998, Bell Atlantic filed a letter requesting an opportunity to refute the Public Advocate's claims. On January 19, 1998, Bell Atlantic filed a letter in reply to the Public Advocate's request for investigation, stating that the Public Advocate's suggestion that Bell Atlantic has been dilatory is incorrect.

Bell Atlantic states that it has taken numerous steps to fulfill the checklist obligations and pave the way towards local exchange competition, including intraLATA presubscription, preparation and support of TELRIC cost studies, preparation and support of an Statement of Generally Available Terms (SGAT), and the execution of numerous interconnection and resale agreements. Bell Atlantic further argues that compliance with the checklist has meaning only with respect to developments taking place around the nation. Bell Atlantic argues that the record in New York represents the best available evidence corroborating Bell Atlantic's compliance with the checklist. Bell Atlantic argues that penalties and other sanctions are inappropriate because the Company has at all times complied fully with applicable Commission Orders and therefore the Public Advocate's motion should be denied. On January 23, 1998, the Public Advocate filed its Reply to Bell Atlantic's opposition to its motion. The Public Advocate argues that Bell Atlantic has failed to satisfy a specific condition of the Commission's conditional approval of the merger and that Bell Atlantic is seeking to satisfy the Section 271 checklist on the same schedule and for the same reasons that it would absent the merger condition, i.e., its

desire to provide interLATA service. The Public Advocate argues that the purpose of the merger condition was to ensure that Bell Atlantic open its Maine local network to its competitors by a date certain so that there would be local competition in Maine by that date. The Public Advocate therefore argues that the Commission should either impose an appropriate penalty against Bell Atlantic or in the alternative should consider a substitute merger condition that is designed to provide the benefits and protections to ratepayers that the Commission originally intended. The Public Advocate suggested that the Commission should consider whether Bell Atlantic's failure to comply with the merger condition should be remedied by reduced local rates that will make up for the lack of competition between the date of the merger and the date that the Commission finds the Section 271 checklist to be satisfied.

We will not begin an investigation to consider sanctions to be imposed upon Bell Atlantic. At this time, we also will not impose a substitute merger condition. In our September 30, 1997 Order in this docket we suspended and modified our condition that Bell Atlantic meet the requirements of the competitive checklist by September 30, 1997 by requiring that Bell Atlantic report to us by December 15, 1997 regarding its progress in meeting the competitive checklist in Maine. On December 12, 1997, Bell Atlantic did report to us, and thus the Company is in compliance with our Orders in this docket. By this order, we require further detailed reporting by Bell Atlantic. Based on those reports, we will consider the need for further requirements or actions.

This decision comports with the intent of the merger condition, which was to provide some assurance that Maine would not lag significantly behind other Bell Atlantic jurisdictions in effectively opening its market to competitors. In this decision, we continue to require Bell Atlantic's attention to the checklist items in Maine within a reasonably short timeframe after resolution in New York.

### **III. REPORTING REQUIREMENTS**

We will not at this time establish a new schedule that sets specific dates by which Bell Atlantic shall prove that its markets in Maine are fully open to competitors. We will, however, require the Company to report to us on its activities. Bell Atlantic shall:

1. File a report with the Commission indicating the status of the New York proceeding within 20 days of the date of this Order. In its report, the Company shall describe the current status of the New York proceeding as well as any progress that Bell Atlantic has made in meeting the Maine checklist;
2. File a report in this docket no later than 40 days after the New York Public Service Commission (NYPSC) has issued its Order in its competitive checklist proceeding. Bell Atlantic shall identify those items in the NYPSC's Order that have significance to Maine and shall point out those items where Maine's circumstances differ from those in New York; and
3. Provide us with at least 90-days notice of its intent to file a § 271 application with the FCC.

BY ORDER OF THE COMMISSION

---

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Hunt